



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,392	06/23/2003	Jens Nielsen	104035.263005	1693
826	7590	12/13/2005	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000				LAMM, MARINA
ART UNIT		PAPER NUMBER		
1616				

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/602,392	NIELSEN ET AL.
	Examiner	Art Unit
	Marina Lamm	1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 11 October 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

**DETAILED ACTION*****Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/11/05 has been entered.

2. Claims pending are 1-20. Claims 1, 10 and 17 have been amended.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-6, 8-11, 13-16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loffler (US 2001/0005737 or 6,489,395), of record.

*Since both references appear to have identical disclosures, any reference hereinafter to paragraph numbers will be based upon the US Patent Application Publication disclosure.*

Loffler teaches cosmetic emulsions which may be of o/w or w/o type, comprising 5-95% of oil phase, 25-85% of water phase, 0.6-0.7% of ammonium acryloyldimethyltaurare/vinylpyrrolidone copolymer (Aristoflex AVC) and 0.1-5% of oligoester emulsifier. See Abstract; [0038]-[0039], [0043], Examples. The emulsions may contain glycerol, dyes, antioxidants and other additives in a total

amount of 1-10%. See [0041], [0044]-[0045]. In addition to oligoester emulsifiers, the emulsions may contain non-ionic co-emulsifiers such as glyceryl monostearate and ethoxylated fatty alcohols and acids. See [0043]. Loffler does not explicitly teach w/o emulsions containing acryloyldimethyltaurare/vinylpyrrolidone copolymer of the instant claims. However, the reference teaches that the emulsions may be either of o/w or w/o types as discussed above. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to produce emulsions of Loffler in w/o form. One having ordinary skill in the art would have been motivated to do this to obtain yet another cosmetic formulation as suggested by Loffler. With respect to Claims 11 and 13-15, while teaching that additives and auxiliaries, including colorants and vitamin complexes, may comprise total of 0.1-10% of the composition, the reference does not explicitly teach the claimed amounts of dyes and/or antioxidants. However, it is the Examiner's opinion that the determination of optimal or workable amounts of dyes and/or antioxidants within the reference's generic disclosure by routine experimentation is obvious absent showing of criticality of the claimed concentrations. One having ordinary skill in the art would have been motivated to do this to obtain the desired aesthetic, coloring and/or antioxidant properties of the composition.

5. Claims 7, 12 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loffler (US 2001/0005737 or 6,489,395) in view of Röckl et al. (US 5,690,919), all of record.

Loffler applied as above. With respect to Claim 7, Loffler does not explicitly teach the claimed cosmetic oils. However, such oils (e.g. octyldodecanol) are conventionally used for their art-recognized purpose, i.e. as emollients and/or carriers. See Röckl et al. @ col. 6, lines 54-60. With respect to Claim 12, Loffler does not explicitly teach the claimed antioxidants. However, the claimed compounds (e.g. vitamin E) are conventionally used for their art-recognized purpose, i.e. as antioxidants. See Röckl et al. @ col. 7, lines 26-27. With respect to Claims 18-20, Loffler does not explicitly teach the claimed mode of application. However, it is known in the cosmetic art to apply skin care compositions by spraying, by means of a roll-on device or by a pump device. See Röckl et al. @ col. 6, lines 35-42. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the compositions of Loffler such that to employ octyldodecanol. One having ordinary skill in the art would have been motivated to do this because octyldodecanol is a customary cosmetic carrier as suggested by Röckl et al. Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the compositions of Loffler such that to employ tocopherol as an antioxidant. One having ordinary skill in the art would have been motivated to do this to obtain the antioxidant effect and improved stability of the composition as

suggested by Röckl et al. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of application of Loffler such that to apply their compositions by spraying, by means of a roll-on device or by a pump device. One having ordinary skill in the art would have been motivated to do this to obtain a variety of products as suggested by Röckl et al.

***Response to Arguments***

6. The rejection of Claims 1-6, 8-10, 16 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Loffler has been withdrawn in view of the amendment to Claims 1, 10 and 17. However, upon further reconsideration, a new ground of rejection is made over the same reference as discussed above.

7. Applicants' arguments filed 10/11/05, with respect to the obviousness of the instant invention over the Loffler reference, have been fully considered but they are not persuasive.

The Applicants argue: "The present claims are also not obvious in view of Loffler, either alone or in combination with Röckl. As stated in the previous paragraph, Loffler does not disclose the use of the copolymer recited in the present claims in an emulsion, wherein the emulsion is in the form of a water-in-oil emulsion. Furthermore, Loffler provides no teaching or suggestion for using the copolymer recited in the present claims in a water-in-oil emulsion. Röckl also fails to provide this teaching or suggestion. Accordingly, the present claims are also not obvious under 35 U.S.C. § 103(a) in view of Loffler, either alone or in combination with Röckl." See pp. 6-7 of the reply.

In response, Loffler explicitly teaches that his emulsions may be in the form of either o/w or w/o emulsions, both of which are very well known in the

art of cosmetic compositions. Thus, the reference itself provides the motivation and suggestion to use either emulsion type depending on the desired product form and/or cosmetic effect.

***Conclusion***

8. No claim is allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mon-Fri from 11am to 7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's acting supervisor, Sreenivasan Padmanabhan, can be reached at (571) 272-0629.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marina Jamm  
12/4/05

  
SREENI RAJA NAABHAN  
SUPERVISORY PATENT EXAMINER